Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1994

ST. JUDE HOSPITAL OF KENNER, LOUISIANA, INC.,
Petitioner,

v.

TRAVELERS INSURANCE COMPANY

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether *res judicata* bars a plaintiff's second action against petitioner where the first action resulted in a judgment of no liability and the second action merely asserts a different theory of alleged liability arising from the same facts addressed in the first action, a question on which the court of appeals' decision is in conflict with the rulings of other federal courts of appeals.

STATEMENT UNDER RULE 29.1

In accordance with Rule 29.1 of the Rules of this Court, petitioner St. Jude Hospital of Kenner, Louisiana, Inc. states that it is a wholly-owned subsidiary of Liljeberg Enterprises Inc., a privately held corporation. Petitioner further states that it has no subsidiaries whose stock is publicly traded.

TABLE OF CONTENTS

	Page
OPINIONS BELOW	1
JURISDICTION	1
STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	2
A. Factual Background	2
B. Proceedings In *Travelers I*	3
C. Proceedings In The District Court In *Travelers II*	7
D. The Court Of Appeals' Decision In *Travelers II*..	9
REASONS FOR GRANTING THE PETITION	10
I. REVIEW IS WARRANTED TO PROTECT THE FUNDAMENTAL VALUES UNDERLYING THE *RES JUDICATA* DOCTRINE, AS REFLECTED IN THIS COURT'S DECISIONS, AND TO ELIMINATE CONFUSION CONCERNING THE DOCTRINE'S SCOPE AND PROPER APPLICATION	11
II. THE COURT OF APPEALS' DECISION INVOLVES A CONFLICT AMONG THE CIRCUITS AND IS WRONG	16
A. There Is A Direct Conflict Between The Fifth Circuit's Decision In This Case And The Tenth Circuit's Decision In *Lowell Staats Mining*	17
B. The Decision Below Improperly Constricts The Scope Of The *Res Judicata* Doctrine And Departs From This Court's Precedent..	20
III. REVIEW BY THIS COURT WOULD HAVE A SALUTARY EFFECT NOT ONLY ON THE *RES JUDICATA* DOCTRINE BUT ALSO ON RELATED FEDERAL RULES	24
CONCLUSION	26

TABLE OF AUTHORITIES

CASES — Page

Allen v. McCurry, 449 U.S. 90 (1980) 12, 14, 20
Baker v. Gold Seal Liquors, Inc., 417 U.S. 467 (1974) 24
Barr v. RTC, 837 S.W.2d 627 (Tex. 1992) 19-20
Brown v. Felsen, 442 U.S. 127 (1979) 12, 14
Cemer v. Marathon Oil Co., 583 F.2d 830 (6th Cir. 1978) 15
Colonial Penn Life Ins. Co. v. Hallmark Ins. Adm'rs, Inc., 31 F.3d 445 (7th Cir. 1994) 12, 15, 25
Columbia Plaza Corp. v. Security Nat'l Bank, 525 F.2d 620 (D.C. Cir. 1975) 25
Commissioner v. Sunnen, 333 U.S. 591 (1948) 14
Employers Ins. of Wausau v. United States, 764 F.2d 1572 (Fed. Cir. 1985) 25
FDIC v. Mmahat, 960 F.2d 1325 (5th Cir. 1992), *cert. denied*, —— U.S. ——, 113 S. Ct. 1044 (1993) 9, 21
Federated Dep't Stores, Inc. v. Moitie, 452 U.S. 394 (1981) 11, 14, 20, 23, 24
Hart Steel Co. v. Railroad Supply Co., 244 U.S. 294 (1917) 11
Heiser v. Woodruff, 327 U.S. 726 (1946) 23
Herrmann v. Cencom Cable Assocs., Inc., 999 F.2d 223 (7th Cir. 1993) 12-13, 15
Hurn v. Oursler, 289 U.S. 238 (1933) 15
I.A.M. Nat'l Pension Fund v. Industrial Gear Mfg. Co., 723 F.2d 944 (D.C. Cir. 1983) 15, 16
Lary v. Ansari, 817 F.2d 1521 (11th Cir.), *cert. denied*, 484 U.S. 964 (1987) 19
Liljeberg v. Health Servs. Acquisition Corp., 486 U.S. 847 (1988) 2
Lowell Staats Mining Co. v. Philadelphia Elec. Co., 660 F. Supp. 809 (D. Colo. 1987), *aff'd*, 878 F.2d 1271 (10th Cir. 1989) 10, 17-19
Magic Valley Radiology, P.A. v. Kolouch, 849 P.2d 107 (Idaho 1993) 20
Manego v. Orleans Board of Trade, 773 F.2d 1 (1st Cir. 1985), *cert. denied*, 475 U.S. 1084 (1986) 19

TABLE OF AUTHORITIES—Continued

	Page
Matter of Howe, 913 F.2d 1138 (5th Cir. 1990)	9
May v. Parker-Abbott Transfer and Storage, Inc., 899 F.2d 1007 (10th Cir. 1990)	16
McCaffrey v. Rex Motor Transp. Inc., 672 F.2d 246 (1st Cir. 1982)	25
Midcontinent Broadcasting Co. v. Dresser Indus., Inc., 669 F.2d 564 (8th Cir. 1982)	15
Montana v. United States, 440 U.S. 147 (1979)	12, 14
Needl v. National Hockey League, 439 F. Supp. 446 (W.D.N.Y. 1977)	15
Nevada v. United States, 463 U.S. 110 (1983)	11, 14
Nilsen v. City of Moss Point, 701 F.2d 556 (5th Cir. 1983)	9
Olmstead v. Amoco Oil Co., 725 F.2d 627 (11th Cir. 1984)	19
Plant v. Blazer Fin. Servs., Inc., 598 F.2d 1357 (5th Cir. 1979)	25
Ray v. TVA, 677 F.2d 818 (11th Cir. 1982), *cert. denied*, 459 U.S. 1147 (1983)	15
Reed v. Allen, 286 U.S. 191 (1932)	24
Southern Const. Co. v. Pickard, 371 U.S. 57 (1962)	25
Southern Pac. R. Co. v. United States, 168 U.S. 1 (1897)	11-12
Sue & Sam Mfg. Co. v. B-L-S Constr. Co., 538 F.2d 1048 (4th Cir. 1976)	25
The Washington, Alexandria, and Georgetown Steam-Packet Co. v. Sickles, 65 U.S. 333 (1860)	14
U.S. Indus., Inc. v. Blake Constr. Co., 765 F.2d 195 (D.C. Cir. 1985)	20, 22
United States v. Memphis Cotton Oil Co., 288 U.S. 62 (1933)	15
Williamson v. Columbia Gas & Elec. Corp., 186 F.2d 464 (3d Cir. 1950)	15

STATUTES AND RULES

28 U.S.C. § 1254(1)	1
Fed. R. Civ. P. 13(a)	10, 24, 25, 26
La. Code Civ. Proc. art. 737	2

TABLE OF AUTHORITIES—Continued

	Page
La. Civ. Code art. 2817	2, 5
La. Civ. Code Ann. art. 2817, revision comments	5
MISCELLANEOUS	
David P. Currie, *Res Judicata: The Neglected Defense*, 45 U. Chi. L. Rev. 317 (1978)	12
1B James W. Moore, Jo Desha Lucas, & Thomas S. Currier, *Moore's Federal Practice* ¶ 0.410[1]	13
Restatement (Second) of Judgments § 24(1) (1982)	15, 22
Restatement (Second) of Judgments § 24(2) (1982)	15-16
18 Charles A. Wright, Arthur R. Miller, & Edward H. Cooper Cooper, *Federal Practice and Procedure* § 4407 (1981)	13
6 Charles A. Wright, Arthur R. Miller, & Mary Kay Kane, *Federal Practice and Procedure* § 1409 (1990)	25

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PETITION FOR A WRIT OF CERTIORARI

St. Jude Hospital of Kenner, Louisiana, Inc. ("St. Jude Hospital" or "Petitioner"), by its undersigned counsel, respectfully petitions for a writ of certiorari to review the judgment of the court of appeals in this case.

OPINIONS BELOW

The opinion of the court of appeals (App. 1a-8a) is reported at 37 F.3d 193. The opinions of the district court (App. 9a-14a, App. 15a-19a) are not reported.

JURISDICTION

The judgment of the court of appeals was entered on October 25, 1994. A petition for rehearing was denied on November 23, 1994. App. 34a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

This petition primarily concerns the common law doctrine of *res judicata*, and does not require interpretation of constitutional, statutory, or regulatory provisions. Two Louisiana statutes that may be relevant, La. Code Civ. Proc. art. 737 and La. Civ. Code art. 2817, are set forth in the appendix. *See* App. 35a.

STATEMENT OF THE CASE

A. Factual Background

St. Jude Hospital is the sole general partner of St. Jude Medical Office Buildings Limited Partnership (the "Limited Partnership"). In the early 1980s, the Limited Partnership built a hospital and an adjacent office building in Kenner, Louisiana.[1]

In 1985, the Limited Partnership sought to refinance the original construction loan that had provided funding for the office building. Respondent Travelers Insurance Company ("Travelers") loaned the Limited Partnership $25,000,000 at an interest rate of 11¾% per annum. The loan was secured primarily by a mortgage on the office building and the land upon which it was built. Additional collateral was provided in the form of a contingent assignment of the rents paid for leased space in the office building.

The Limited Partnership met all of its obligations under the loan until March 1990, when it failed to make timely payment of the March monthly installment. In April 1990, Travelers notified the Limited Partnership that, if payment of all installments then due under the loan was not immediately received, Travelers would accelerate the entire mortgage debt and seek various remedies, including seizure

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[1] An earlier dispute concerning the ownership of St. Jude Hospital and its "certificate of need" from the State of Louisiana was before this Court in *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847 (1988).

and sale of the office building. Travelers also demanded that it immediately begin receiving direct payments of all rents for leased space in the office building.

B. Proceedings In *Travelers I*

In June 1990, when the Limited Partnership failed to cure the default, Travelers filed a diversity action in the United States District Court for the Eastern District of Louisiana ("*Travelers I*"), seeking monetary, declaratory, and injunctive relief. Though Travelers' lawsuit arose out of its loan to the Limited Partnership, and though the Limited Partnership was named as one defendant, the *first* defendant named in the complaint was St. Jude Hospital, and the complaint repeatedly alleged that St. Jude Hospital is the sole general partner of the Limited Partnership.[2] Also named as defendants were Liljeberg Enterprises, Inc. ("LEI") (the parent company of St. Jude Hospital), Krown Drugs, Inc. ("Krown") (another LEI subsidiary), and LEI's two owners, John A. Liljeberg and Robert L. Liljeberg.

As amended, Travelers' 37-page Complaint asserted various claims related to the Limited Partnership's default and the parties' subsequent rights and obligations. These involved: 1) the Limited Partnership's default on its payment obligations under the mortgage note and Travelers' demand that the office building be seized and sold; 2) Travelers' post-default entitlement to rents from LEI and Krown, the major tenants in the office building; 3) Travelers' right to improvements, furniture, fixtures, and equipment in the office building and to relief for damage to, or removal of, collateral securing the loan; and

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[2] *See* Second Restated and Amended Complaint ("Complaint") at ¶¶ 4 and 11. *See also* Complaint at ¶¶ 26, 37, 42, 47, 49, 51, 56, 77, 83, 88, 94, 99. A copy of the Complaint may be found at Exhibit 1 of the Record Excerpts on Behalf of Travelers Insurance Company ("Travelers' Record Excerpts"), which was filed in the court of appeals, and a copy of which has been lodged with the Clerk of this Court.

4) recognition of a property easement and continued provision of sewer and water services to the office building.[3]

No fewer than nine counts of the 12-count Complaint included St. Jude Hospital as a defendant.[4] Among other things, Travelers sought to circumvent the non-recourse provision in the mortgage note and to hold all defendants, including St. Jude Hospital, personally liable "for any and all amounts owed pursuant to the Note." Complaint at ¶¶ 96, 98 (Exhibit 1 to Travelers' Record Excerpts). In addition, Travelers sought a declaratory judgment that St. Jude Hospital was liable for any debt that any defendant owed to Travelers. Travelers requested specifically:

> That the Court issue judgment or declaratory judgment holding . . . St. Jude Hospital . . . personally liable for all indebtedness owed by any of the defendants to Travelers, including, but not limited to, the Note.

Id. at Prayer for Relief, ¶ 16.

In light of Travelers' global Complaint against St. Jude Hospital, its repeated allegation that St. Jude Hospital is the Limited Partnership's sole general partner, and its demand that St. Jude Hospital be held personally liable for the debts of the Limited Partnership and the other defendants, St. Jude Hospital naturally understood Travelers to be asserting, *inter alia*, that St. Jude Hospital, by virtue of its status as the general partner of the Limited

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[3] Also included in the lawsuit was a claim unrelated to the mortgage. Count XII of the Complaint alleges that, "[s]ubsequent to June, 1990, Travelers discovered that a leaking underground storage tank containing diesel fuel had been present on the Property." *See* Complaint at ¶¶ 99-102 (Exhibit 1 to Travelers' Record Excerpts). Travelers sought indemnification from the defendants.

[4] Only Counts I (seizure and sale of the office building for default on the mortgage note), VII (LEI's and Krown's rent payments after May 1, 1990), and IX (removal of property from the office building) did not seek relief from St. Jude Hospital. Complaint at ¶¶ 26-36, 56-76, 83-87 (Exhibit 1 to Travelers' Record Excerpts).

Partnership, should be held liable for the Limited Partnership's debts. In its answer, therefore, St. Jude Hospital cited La. Civ. Code art. 2817 (App. 35a) and pled, among other defenses, "discussion of the assets of the partnership" (*i.e.*, that partners are liable only where the partnership's assets are inadequate to eliminate the debt).[5] As the comments to Section 2817 explain:

> (a) This article sets forth the rule that creditors must look to the partnership first for the debts of the partnership. The partners are only secondarily liable. This continues the present jurisprudence, but the article adds a new provision to the effect that if a partner is sued on a partnership debt, the partner may plead discussion of the partnership's assets. A third person may sue the partnership and the partners at the same time, as provided in Article 737 of the Louisiana Code of Civil Procedure, but can recover against a partner who has properly pleaded discussion only if the partnership's assets have been exhausted or the partnership has been dissolved.

La. Civ. Code Ann. art. 2817, revision comments. Relying on Section 2817, St. Jude Hospital stated in its answer that, "[a]s a matter of law, the general and limited partners are not primarily liable for the satisfaction of the debts of [the Limited Partnership]." Answer to Second Restated and Amended Complaint at 4.

At Travelers' request, the district court granted partial summary judgment for Travelers, ordering the office building and land to be seized and sold, with the proceeds of the sale to be used to repay the note.[6] The remainder

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[5] *See* Fifth Defense of Answer to Second Restated and Amended Complaint at 2. A copy of the relevant page of the Answer may be found at Exhibit O of the Record Excerpts of Appellant St. Jude Hospital ("Petitioner's Record Excerpts"), which was filed in the court of appeals and a copy of which has been lodged with the Clerk of this Court.

[6] In October 1991, Travelers purchased the building and land at a public auction.

of the case, including Travelers' claims against St. Jude Hospital, proceeded to trial. Among the uncontested material facts to which the parties agreed in the pretrial order was that St. Jude Hospital was the general partner of the Limited Partnership. In addition, several contested facts and legal conclusions concerned Travelers' attempts to hold St. Jude Hospital liable for the debts of the Limited Partnership and other defendants. *See* Pretrial Order at 80, 88, 91 (relevant portions attached to Exhibit 2 to Travelers' Record Excerpts).

At trial, in addition to the liability theories set forth in the Complaint, Travelers argued that the Limited Partnership had impaired the mortgage collateral by negligently failing to collect certain rent payments from LEI and Krown prior to June 1990, and negligently misrepresenting that the rents had been collected. Travelers sought damages in the amount of the allegedly uncollected rents.

At the close of trial, the district court ruled that there was insufficient evidence to justify sending any of Travelers' claims against St. Jude Hospital to the jury. Travelers' case against the remaining defendants then went to the jury, and the jury awarded money damages against all defendants except St. Jude Hospital.

Based on the jury's verdict, the district court entered an Amended Judgment on December 3, 1992. The judgment: 1) ordered the Limited Partnership to pay nearly $2.5 million (plus more than $3 million in interest) for rents due between 1985 and June 1990, when the original complaint was filed (LEI and Krown were also adjudged liable for their respective portions of these rents); 2) ordered the Limited Partnership and other defendants to pay $175,000 (plus interest) for damage to collateral; and 3) ordered the Limited Partnership to pay $214,942 for breach of contract.[7] The judgment also obliged LEI

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[7] *See* Amended Judgment at ¶¶ 1-6. A copy of the Amended Judgment may be found at Exhibit K of Petitioner's Record Excerpts.

to pay $484,000, and Krown to pay $597,000, for rents due since June 1990. The judgment imposed no liability on St. Jude Hospital. In particular, the district court, by virtue of its having granted a directed verdict in favor of St. Jude Hospital, necessarily rejected Travelers' request that St. Jude Hospital be held personally liable for all indebtedness owed to Travelers by any other defendant. Travelers did not appeal the judgment as to St. Jude Hospital.

C. Proceedings In The District Court In *Travelers II*

On January 15, 1993, only six weeks after completion of its original district court litigation against the Limited Partnership, St. Jude Hospital, and the other defendants, Travelers filed the present case, a new action against St. Jude Hospital (*"Travelers II"*). The purpose of this new action was to impose on St. Jude Hospital the obligation to satisfy the judgment rendered against the Limited Partnership in *Travelers I*. Travelers' second complaint against St. Jude Hospital contained eight paragraphs—two identifying the parties, two pleading jurisdiction and venue, and four labeled "Factual Allegations." [8] The factual allegations were that: 1) St. Jude Hospital was the Limited Partnership's sole general partner; 2) Travelers had obtained a judgment against the Limited Partnership; 3) the judgment had not been satisfied; and 4) "Travelers now seeks to have St. Jude Hospital, as general partner of [the Limited Partnership], held liable for the amount due and owing by [the Limited Partnership] under the Amended Judgment." Second Complaint at ¶¶ 5-8 (Exhibit P to Petitioner's Record Excerpts).

Following St. Jude Hospital's answer, both parties moved for summary judgment. Relying on the final judgment in *Travelers I*, St. Jude Hospital's motion asserted a *res judicata* defense and argued that Travelers' second

[8] See Complaint ("Second Complaint") at ¶¶ 1-8. A copy of the Second Complaint may be found at Exhibit P of Petitioner's Record Excerpts.

action was barred because Travelers' claim in fact had been, and in any event could have been, pursued in *Travelers I*. In May 1993, notwithstanding Travelers' acknowledgment that it could have brought its claim against St. Jude Hospital in *Travelers I*, and notwithstanding the fact that only six months earlier the same parties were in trial over what obligations, if any, St. Jude Hospital owed to Travelers, the district court denied St. Jude Hospital's motion and granted Travelers' motion.

According to the district court, it rejected petitioner's *res judicata* defense because: 1) the *Travelers I* jury "was not asked to decide whether [St. Jude Hospital] would be liable to Travelers, whether primarily or secondarily, for that same debt based on its status as general partner of the [Limited] Partnership;" 2) Travelers' claim in the second action was not "part of the transaction" at issue in *Travelers I* because "Travelers' rights against [St. Jude Hospital] arose only when Travelers obtained judgment against the [Limited] Partnership and the [Limited] Partnership, in turn, was unable to pay the judgment;" 3) Travelers was not required by Louisiana law to sue the partnership and the general partner in the same action; and 4) St. Jude Hospital's presence in the earlier litigation did "not change the secondary nature of the claim asserted herein by Travelers." App. 12a.

In denying St. Jude Hospital's motion for reconsideration, the district court stated that: 1) neither the *Travelers I* "Court nor the jury decided implicitly or explicitly that . . . [St. Jude Hospital] was . . . relieved of a legal obligation to pay a debt derived from its relationship as general partner to the debtor partnership;" and 2) "the nucleus of operative facts, the common core of facts, are entirely different for each case." App. 18a and 17a (footnotes omitted). The court also declared that St. Jude Hospital had "evidently missed the point," and that *res judicata* did not apply because " 'the same cause of action' " was not involved in both cases. *Id.* at 16a, 18a

n.8 (quoting *Nilsen v. City of Moss Point*, 701 F.2d 556, 559 (5th Cir. 1983)).

D. The Court Of Appeals' Decision In *Travelers II*

The court of appeals affirmed. Reciting the factors that it considers in evaluating a *res judicata* defense, the court acknowledged that the parties were identical in both actions, that the district court was a court of competent jurisdiction, and that the judgment in *Travelers I* was final on the merits. The court then turned to the only remaining factor in its four-part *res judicata* test: "whether both cases involve the same cause of action." App. 5a. "To determine whether the same cause of action was involved," the court of appeals applied a "transactional test." *Id.* In the court's view, " 'the critical issue is not the relief requested or the theory asserted but whether [the] plaintiff bases the two actions on the same nucleus of operative facts.' " App. 5a (quoting *Matter of Howe*, 913 F.2d 1138, 1144 (5th Cir. 1990)) (bracketed word added by court below). The court then ruled that Travelers' second action against St. Jude Hospital did not arise out of the same nucleus of operative facts as *Travelers I*.

In reaching that conclusion, the court relied on its decision in *FDIC v. Mmahat*, 960 F.2d 1325 (5th Cir. 1992), *cert. denied*, —— U.S. ——, 113 S. Ct. 1044 (1993). The court acknowledged that, "unlike the partner (Duffy) in *Mmahat*, [St. Jude Hospital] was a party in the underlying litigation." App. 7a. The court concluded, however, that this is "a distinction without a difference" because, although Travelers pressed numerous claims against St. Jude Hospital in *Travelers I* and all of those claims were unsuccessful, Travelers did not, according to the court, previously sue St. Jude Hospital "for its secondary liability as the general partner." *Id.* at 7a, 8a.

REASONS FOR GRANTING THE PETITION

This case presents significant issues concerning the proper scope and application of the *res judicata* doctrine. As this Court has repeatedly emphasized, the *res judicata* doctrine is critical to both courts and litigants because it prevents costly or vexatious repetitive law suits, conserves judicial resources and frees courts to resolve other disputes, encourages reliance on judicial decisions by providing finality, and promotes simple justice. Notwithstanding its central importance to the judicial system, the doctrine is misunderstood and misinterpreted by the lower courts and by litigants. The court of appeals ignored or misapplied this Court's *res judicata* decisions, and its holding threatens to undermine the very values the doctrine is designed to protect.

Moreover, the court of appeals' decision creates a conflict among the circuits. The court's ruling is directly at odds with *Lowell Staats Mining Co. v. Philadelphia Elec. Co.*, 878 F.2d 1271 (10th Cir. 1989). The Tenth Circuit there applied the *res judicata* doctrine to bar plaintiff's effort to hold a partner that had been a party to an earlier suit secondarily liable for a partnership debt or unsatisfied judgment. *Lowell Staats Mining* is correct, the decision below is not, and this Court should resolve the conflict so that the meaning and application of *res judicata* do not depend on which side of the Texas/Oklahoma border a court or litigant is on.

Finally, guidance from this Court regarding the proper bounds of the *res judicata* doctrine will have application far beyond this case. Cases in federal court involving *res judicata* issues arise frequently, and by themselves are sufficient to establish the importance of the question presented here. But the Court's ruling would provide assistance in other circumstances as well. For example, Rule 13(a) of the Federal Rules of Civil Procedure, which governs compulsory counterclaims, is based on policies and standards very similar, if not identical, to

those presented by the *res judicata* doctrine. In addition, the Court's application of the *res judicata* doctrine under federal law doubtless would be relevant to state court interpretations of the same common law doctrine.

For all of these reasons, which are explained more fully below, the Court should grant review and provide much-needed guidance regarding the circumstances under which *res judicata* bars a subsequent action.

I. REVIEW IS WARRANTED TO PROTECT THE FUNDAMENTAL VALUES UNDERLYING THE *RES JUDICATA* DOCTRINE, AS REFLECTED IN THIS COURT'S DECISIONS, AND TO ELIMINATE CONFUSION CONCERNING THE DOCTRINE'S SCOPE AND PROPER APPLICATION

The *res judicata* doctrine bars a party "from relitigating issues that were or *could have been raised* in that action" in which a final judgment on the merits has been entered. *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (1981) (emphasis added). Though the doctrine's roots are ancient, this Court has "stressed that '[the] doctrine of *res judicata* is not a mere matter of practice or procedure inherited from a more technical time than ours.' " *Id.* at 401 (quoting *Hart Steel Co. v. Railroad Supply Co.*, 244 U.S. 294, 299 (1917)). Rather, " '[*i*]*t is a rule of fundamental and substantial justice, of public policy and of private peace, which should be cordially regarded and enforced by the courts . . . .*' " *Id.* (internal quotation marks deleted) (emphasis added).

As this Court has stated, proper enforcement of the *res judicata* doctrine " 'is essential to the maintenance of social order.' " *Nevada v. United States*, 463 U.S. 110, 129 (1983) (quoting *Southern Pac. R. Co. v. United States*, 168 U.S. 1, 49 (1897)). This is so because the doctrine was established " 'to secure the peace and repose of society by the settlement of matters capable of judicial determination.' " *Nevada*, 463 U.S. at 129 (quoting

Southern Pac. R. Co., 168 U.S. at 49). Other values served by the *res judicata* doctrine are "reliev[ing] parties of the cost and vexation of multiple lawsuits, conserv[ing] judicial resources, and, by preventing inconsistent decisions, encourag[ing] reliance on adjudication." *Allen v. McCurry*, 449 U.S. 90, 94 (1980) (citing *Montana v. United States*, 440 U.S. 147, 153-154 (1979)). The doctrine also "frees the courts to resolve other disputes." *Brown v. Felsen*, 442 U.S. 127, 131 (1979).

Notwithstanding its importance to society and the judicial system, the *res judicata* doctrine and the *res judicata* defense are not well understood by litigants, and the standards for its application are unclear even to the courts. As Professor Currie observed more than 15 years ago, the "obvious [res judicata] argument has an uncanny way of eluding both litigants and courts." David P. Currie, *Res Judicata: The Neglected Defense*, 45 U. Chi. L. Rev. 317 (1978). Recognizing the importance of the doctrine and the desirability of its reliable and predictable application, Professor Currie urged courts "to rethink archaic limitations on res judicata that permit unjustifiable duplication or splitting of litigation." *Id.* at 350.

The lack of clarity concerning the *res judicata* doctrine and its application is not merely an academic concern. Just last year, the Seventh Circuit

> observed that the law of res judicata is "not as clear as it might be," and lamented that in this important area of law it is most unsatisfying to rely—as the cases and commentators tell us to—on "pragmatism" and fuzzy lines . . . .

Colonial Penn Life Ins. Co. v. Hallmark Ins. Adm'rs, Inc., 31 F.3d 445, 447 (7th Cir. 1994) (quoting *Herrmann v. Cencom Cable Assocs., Inc.*, 999 F.2d 223, 226 (7th Cir. 1993)). The year before, in *Herrmann*, the court had explained the problem with a fuzzy pragmatic test:

> We're all for pragmatism, but pragmatism is not an operational legal standard. Litigants and their lawyers are entitled to clearer guidance . . . . Where certainty is at a premium [because failure to assert a claim subject to the *res judicata* doctrine bars its later prosecution], sound lawmaking requires the setting forth of clear and definite criteria rather than a general directive to decide each case in the manner that will maximize the attainment of the law's objectives. The latter approach, carried to the extreme, would reduce all law to an admonition to do what's right.

999 F.2d at 226 (Posner, J.).

The Seventh Circuit is not alone in remarking on the lack of clarity concerning application of the *res judicata* doctrine. As a leading treatise has stated:

> It would be desirable in many ways to have a simple abstract definition of so central a concept, and detailed specific rules for clear guidance in most common situations. Uncertain rules may catch litigants in traps of forfeiture, defeating just claims by procedural defaults that may become more understandable as the rules become less certain. Uncertainty intrinsically works to defeat the opportunities for repose and reliance sought by the rules of preclusion, and confounds the desire for efficiency by inviting repetitious litigation to test the preclusive effect of the first effort.

18 Charles A. Wright, Arthur R. Miller, & Edward H. Cooper, *Federal Practice and Procedure* § 4407, at 48-49 (1981).[9]

Application of the *res judicata* doctrine would be made considerably simpler and more predictable if the critical

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[9] *See also* 1B James W. Moore, Jo Desha Lucas, & Thomas S. Currier, *Moore's Federal Practice* ¶ 0.410[1], at III-176 and III-187 (2d ed. 1994) ("What constitutes a single cause of action for these purposes has been a troublesome question" and "the courts have not always found it easy to draw a distinction between cases that present separate claims or causes of action and cases that present a single claim based on different theories").

inquiry were universally recognized to be the one identified by this Court in recent opinions, namely, whether the subsequent action involves claims "that were or could have been raised" in the earlier action.[10] An additional requirement of some factual relationship between the actions would avoid any claim of unfairness that might arise from today's liberal joinder rules, which, subject to *ad hoc* motions to sever, generally permit even totally unrelated claims between the same parties to be joined in a single action. When, however, the test for application of *res judicata* is expanded beyond claims "that were or could have been raised" in the earlier action to include a further requirement that the new claims involve "the same cause of action," [11] the same "nucleus of operative fact" (App. 5a), or "identity of the thing demanded [and] identity of the cause of the demand," [12] problems inevitably arise. In part, this is because, as this Court has recognized, the additional words and phrases that are sometimes used to explain *res judicata* "have not remained static over time." *Nevada*, 463 U.S. at 130.

Even within a particular phrase, common precise definitions are often absent. As the D.C. Circuit has observed concerning the phrase "cause of action,"

> [the a]uthorities do not provide a uniform definition for the term "cause of action" in connection with the application of res judicata. The term has been given varied treatment depending largely on the facts in each case.

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[10] *See Federated Dep't Stores*, 452 U.S. at 398; *Allen*, 449 U.S. at 94.

[11] *See Nevada*, 463 U.S. at 130; *Brown*, 442 U.S. at 131 (quoting *Montana*, 440 U.S. at 153); *Commissioner v. Sunnen*, 333 U.S. 591, 597 (1948).

[12] *The Washington, Alexandria, and Georgetown Steam-Packet Co. v. Sickles*, 65 U.S. 333, 341-342 (1860).

I.A.M. Nat'l Pension Fund v. Industrial Gear Mfg. Co., 723 F.2d 944, 947 (D.C. Cir. 1983) (citing *Nash County Bd. of Ed. v. Biltmore Co.*, 640 F.2d 484, 487 (4th Cir. 1981)). Other courts also have recognized that the phrase "cause of action" has different meanings in different legal contexts.[13] The courts of appeals have chosen to emphasize different aspects of the various formulations, often focusing on the "wrong" or "injury" for which relief is sought.[14]

The area is further complicated by many courts' reliance on the Restatement (Second) of Judgments, which sets forth the "pragmatic" test criticized in *Colonial Penn* and *Herrmann*. Section 24 of the Restatement states that *res judicata* extinguishes claims based on "rights of the plaintiff to remedies against the defendant with respect to *all or any part of the transaction, or series of connected transactions, out of which the* [*first*] *action arose.*" Restatement (Second) of Judgments § 24(1) (1982) (emphasis added). What constitutes a "transaction" is

> to be determined pragmatically, giving weight to such considerations as whether the facts are related in

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[13] *See, e.g., Williamson v. Columbia Gas & Elec. Corp.*, 186 F.2d 464, 469 (3d Cir. 1950) ("As has often been said, the phrase 'cause of action' means different things in different contexts") (citing *Hurn v. Oursler*, 289 U.S. 238, 247 (1933); *United States v. Memphis Cotton Oil Co.*, 288 U.S. 62, 68 (1933)). *See also Neeld v. National Hockey League*, 439 F. Supp. 446, 451 (W.D.N.Y. 1977) (same).

[14] *See, e.g., Ray v. TVA*, 677 F.2d 818, 821 (11th Cir. 1982), *cert. denied*, 459 U.S. 1147 (1983) ("The principal test for determining whether the causes of action are the same is whether the primary right and duty or wrong are the same in each case"); *Midcontinent Broadcasting Co. v. Dresser Indus., Inc.*, 669 F.2d 564, 566 (8th Cir. 1982) ("In determining whether a cause of action is the same, one has to determine whether a wrong for which redress is sought is the same for both actions"); *Cemer v. Marathon Oil Co.*, 583 F.2d 830, 832 (6th Cir. 1978) ("Where two successive suits seek recovery for the same injury, a judgment on the merits operates as a bar to a later suit, even though a different legal theory of recovery is advanced in the second suit").

> time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage.

Restatement (Second) of Judgments § 24(2) (1982).

Here, application of this Court's focus on claims "that were or could have been raised" in the initial action plainly would have led to sustaining the *res judicata* defense. Travelers has conceded that its claim against St. Jude Hospital in the present case could have been raised in *Travelers I*. *See* Br. for Appellee at 18 (5th Cir.). Likewise, it is clear that the Restatement's formulation, precluding claims "with respect to all or any part of the transaction" out of which the first case arose, would cover Travelers' claim against St. Jude Hospital in this action. The court of appeals, however, employing a hypertechnical view of the phrase "nucleus of operative fact," decided that Travelers should be permitted to resume litigation against petitioner only a few weeks after final judgment in the previous lawsuit. *Compare, e.g., I.A.M. Nat'l Pension Fund*, 723 F.2d at 948-949 (defining "cause of action" narrowly, by reference to specific claims and legal theories asserted, and thus rejecting *res judicata* defense), *with May v. Parker-Abbott Transfer and Storage, Inc.*, 899 F.2d 1007, 1009-1010 (10th Cir. 1990) (sustaining *res judicata* defense based on "transactional" approach of Restatement, and expressly refusing to follow *I.A.M. Nat'l Pension Fund*). This Court should intervene to clarify the rules that govern proper application of the *res judicata* doctrine, and thus to preserve and enhance the efficacy of that doctrine in protecting both courts and litigants from repetitious litigation.

II. THE COURT OF APPEALS' DECISION INVOLVES A CONFLICT AMONG THE CIRCUITS AND IS WRONG

The court of appeals' decision in this case, holding that the *res judicata* doctrine does not preclude a second action against St. Jude Hospital, directly conflicts with the deci-

sion of the Tenth Circuit in *Lowell Staats Mining*. The decision below is incorrect and seriously threatens the future usefulness of the *res judicata* defense.

A. There Is A Direct Conflict Between The Fifth Circuit's Decision In This Case And The Tenth Circuit's Decision In *Lowell Staats Mining*

In *Lowell Staats Mining*, the plaintiff ("Staats") sued Pioneer Uravan, Inc. ("PUI") for breach of contract and misrepresentations. Staats also sued Pioneer Corporation ("PC") and Pioneer Nuclear, Inc. ("PNI"), claiming, under various theories, that they were responsible for any liability of PUI. The court entered a directed verdict in favor of PC and PNI, and the jury awarded Staats more than $600,000 in damages against PUI.[15]

When it was unsuccesful in collecting the full judgment against PUI, Staats filed a second action against PC, PNI, and others, alleging that they were liable for the unsatisfied portion of the judgment. One of Staats' theories for recovery in the second action was that PNI was a partner of PUI, and therefore liable for the judgment against PUI, and that PC was likewise responsible for the judgment as a successor corporation to PNI. The district court *sua sponte* applied the *res judicata* doctrine, and dismissed Staats' claim. 660 F. Supp. at 811-815. In the court's words, "[a]ny claim of PNI liability arising out of the purported partnership relationship . . . should have been litigated in Staats I and is precluded by res judicata." *Id.* at 814.

The Tenth Circuit affirmed, "for substantially the same reasons set forth in the district court's opinion in *Staats v. PEC II*, 660 F. Supp. at 811-16." 878 F.2d at 1278. The court of appeals thus adopted the district court's reasoning with respect to the application of *res judicata* to Staats' partnership-related claims. Because that reasoning

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[15] The abbreviations of the parties' names used in the text are the ones that were used in the district court decision. 660 F. Supp. 809 (D. Colo. 1987). In the court of appeals' opinion, PUI is referred to as "Uravan," PC as "Pioneer," and PNI as "Nuclear."

has such direct application to the present case, we set it forth at some length:

> The fifth claim for relief against PNI is based on the joint responsibility of PNI and PUI to pay any adverse judgment rendered in *Staats I*. This payment obligation is contained in a July 31, 1984 agreement among PUI and defendant PNI, [and others] . . . . Staats characterizes this agreement as a partnership dissolution or settlement agreement. . . .
>
> Staats now contends 'that PNI had agreed to pay and was obligated to satisfy the *Staats*' [*I*] judgment" . . . .
>
> The payment claim could, and should, have been raised in *Staats I*. Staats was obviously aware of the payment claim before *Staats* I was tried . . . . The payment claim could readily have been added to Staats' claims against [PC and PNI]. Staats, however, did not seek leave to undertake any such an action. Moreover, the payment claim was clearly related in time and origin to the other . . . claims [against PC and PNI]. . . . The payment claim would have formed a convenient trial unit along with those pre-existing . . . claims [against PC and PNI]. Thus, the payment claim is part of the same transaction or series of transactions which gave rise to *Staats I*. . . . The payment claim is therefore subject to the claim preclusive effect of the doctrine of res judicata. . . .
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> * * * *
>
> The situation is similar for the seventh claim. That claim asserts that PNI, as a partner of PUI, is liable for PUI's debts. The seventh claim further avers PC is liable because it acquired PNI assets. . . . Any claim of PNI liability arising out of the purported partnership relationship . . . should have been litigated in Staats I and is precluded by res judicata. PNI is therefore dismissed from the seventh claim. Again, since PC's liability is contingent on PNI's liability, PC is also dismissed from the seventh claim.

660 F. Supp. at 813-814.

As in *Lowell Staats Mining*, St. Jude Hospital was a party to the first litigation, and its role as the sole general partner of the Limited Partnership was well known to Travelers. As in *Lowell Staats Mining*, any "payment claim [of Travelers against St. Jude Hospital] could, and should, have been raised" in the earlier action. 660 F. Supp. at 813. Travelers "was obviously aware of the payment claim" and the "payment claim could readily have been added to [Travelers'] claims" to form "a convenient trial unit." *Id.* The "payment claim was clearly related in time and origin" to Travelers' other claims, and it was "part of the same transaction or series of transactions" addressed in *Travelers I, i.e.*, an effort to recover, and to render St. Jude Hospital liable for, debts of the Limited Partnership arising out of the parties' business relationship. Just as the *res judicata* doctrine barred the plaintiff's subsequent claims in *Lowell Staats Mining*, so it barred Travelers' follow-up claim against St. Jude Hospital in the present case.

The decisions in *Lowell Staats Mining* are consistent with decisions issued by other federal courts in comparable situations.[16] The decisions are also consistent with decisions issued by state courts in the same or comparable situations.[17]

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[16] *See, e.g., Lary v. Ansari*, 817 F.2d 1521, 1523 (11th Cir.), *cert. denied*, 484 U.S. 964 (1987) ("[b]ecause [plaintiff] had an opportunity in his first lawsuit to litigate claims relating to his business relationship with [defendant], any future claims relating to the same business relationship are barred by *res judicata*"); *Manego v. Orleans Board of Trade*, 773 F.2d 1, 6-7 (1st Cir. 1985), *cert. denied*, 475 U.S. 1084 (1986) (*res judicata* bars plaintiff's antitrust claim where plaintiff earlier brought an action alleging that some of the same defendants had conspired to deny plaintiff's entertainment and liquor license based on racial animus); *Olmstead v. Amoco Oil Co.*, 725 F.2d 627, 632 (11th Cir. 1984) (plaintiff's fraud claim should have been brought in defendant's earlier eviction proceeding against plaintiff because defendant's termination of plaintiff's lease was "at the core" of both suits).

[17] *See, e.g., Barr v. RTC*, 837 S.W.2d 627 (Tex. 1992) (*res judicata* doctrine bars suit against partner for payment of partner-

B. The Decision Below Improperly Constricts The Scope Of The *Res Judicata* Doctrine And Departs From This Court's Precedent

There are three fundamental errors in the court of appeals' *res judicata* discussion and its conclusion that the doctrine does not apply to Travelers' claim against St. Jude Hospital in this case.

The court of appeals' first error was that it accorded no weight to this Court's repeated holdings that the *res judicata* doctrine bars not only claims or issues that were in fact litigated in the first action, but also claims or issues that "*could have been raised.*" *Federated Dep't Stores*, 452 U.S. at 398 (emphasis added); *see also Allen*, 449 U.S. at 94. In this case, Travelers voluntarily elected to bring St. Jude Hospital before the district court in *Travelers I*. No one forced Travelers to sue St. Jude Hospital in that case; Travelers chose to do so, and it named St. Jude Hospital as the first defendant in the suit. Moreover, Travelers' claims against St. Jude Hospital were extensive. St. Jude Hospital was explicitly named, or included in the group of all defendants, in nine of the 12 counts in Travelers' Complaint.

As an examination of the Complaint shows, *Travelers I* was in the nature of a "global action," in which Travelers appeared to raise all of the claims it wished to assert against the Limited Partnership, LEI, Krown, the Liljebergs, and St. Jude Hospital.[18] Travelers also admittedly

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ship's promissory note based on "his status as a partner" where the plaintiff previously sued the partner asserting liability for the same promissory note based on the partner's alleged guarantee); *Magic Valley Radiology, P.A. v. Kolouch*, 849 P.2d 107, 110 (Idaho 1993) (*res judicata* doctrine bars action to collect from shareholders a judgment against the corporation where plaintiff previously sued the shareholders "based on their personal conduct").

[18] *See U.S. Indus., Inc. v. Blake Constr. Co.*, 765 F.2d 195, 206 (D.C. Cir. 1985) (filing of "global action" encompassing many claims in complex case is relevant to determining application of *res judicata* doctrine).

knew throughout *Travelers I* of St. Jude Hospital's status as the Limited Partnership's sole general partner. It pled that fact over and over in its Complaint and made it one of the uncontested material facts in the first case.

Further, Travelers reasonably could and should have anticipated before and during *Travelers I* that the Limited Partnership would be unable to satisfy a large money damages verdict. After all, even before trial, Travelers had obtained partial summary judgment against the Limited Partnership, and the Limited Partnership had lost its office building and land as a result.

Finally, early in the *Travelers I* litigation, St. Jude Hospital's answer, pleading the defense of "discussion" under Louisiana law, had to have put Travelers on notice of its possible claim against the general partner for secondary liability on the Limited Partnership's debts, even if Travelers did not believe that it already had included such a claim in its multifarious Complaint. Under these circumstances, the only reasonable conclusion is that Travelers could and should have raised its general partner liability claim against St. Jude Hospital in the first action, rather than waiting until a few weeks after the entry of judgment in *Travelers I* to begin this new lawsuit.

Instead of focusing on the *res judicata* doctrine's "could have been raised" standard, the court of appeals relied on what it called the "controlling precedent" of *FDIC v. Mmahat*, 960 F.2d 1325 (5th Cir. 1992), *cert. denied*, —— U.S. ——, 113 S. Ct. 1044 (1993). *See* App. 6a. There, however, *unlike here*, the partner against whom an action was brought to satisfy a judgment entered against the partnership in an earlier case was *not* made a party to the first action. Having improperly narrowed the *res judicata* doctrine's scope, the court of appeals erroneously concluded that the fact that Travelers named St. Jude Hospital as a defendant in the *Travelers I* litigation was a "distinction without a difference" for *res judicata* purposes.

The court of appeals' second error was in concentrating excessively on Travelers' legal theories in its two actions against St. Jude Hospital rather than addressing the fundamental nature of Travelers' claim in both actions. The court of appeals, applying the "transactional test" of the Restatement (Second) of Judgments, concluded that the two actions did not "arise from the same nucleus of operative facts" because Travelers' legal theories allegedly were different—the claim against St. Jude Hospital in *Travelers I* was for its primary liability for the debts of the Limited Partnership "based on its conduct" whereas the claim against St. Jude Hospital in *Travelers II* was "for its secondary liability as the general partner." App. 7a.

Ignored in the court of appeals' analysis is the undisputed fact that what Travelers sought in both *Travelers I* and *Travelers II* was payment of a debt arising out of the Limited Partnership's failure to fulfill its obligations under a single mortgage loan agreement. Also ignored is the undisputed fact that in both cases Travelers asserted theories seeking to have St. Jude Hospital held personally liable for the debts of the Limited Partnership. Similarly disregarded in the court of appeals' discussion is the undisputed fact that Travelers in both actions pled St. Jude Hospital's status as the Limited Partnership's general partner, identifying it as a *material* undisputed fact in *Travelers I*. Because the court of appeals failed to give weight to these facts, Travelers was allowed to do what other courts have prohibited, "to Balkanize" its claims and bring multiple suits. *See U.S. Indus.*, 765 F.2d at 206.

Finally, the court of appeals improperly justified its decision based on an *ad hoc* assessment of the amount of harm created by the court's refusal to recognize a preclusive *res judicata* effect.

> [St. Jude Hospital] did not have to relitigate issues from [*Travelers I*]; any repetition of effort common to both actions would be *de minimis*. No doubt economy and efficiency would have been advanced by

> asserting in [*Travelers I*] a claim against [St. Jude Hospital] for secondary liability; but, as much as we counsel—indeed, require—judicial efficiency and economy, they do not trump Travelers' right to bring [a second] action, in light of its not being barred by *res judicata*.

App. 8a n.9. This Court has unequivocally rejected attempts to make application of the *res judicata* doctrine depend upon such an *ad hoc* assessment of the extent of the harm that would result, in the individual case, to the values protected by *res judicata*. In the Court's words,

> "[s]imple justice" is achieved when a complex body of law developed over a period of years is evenhandedly applied. The doctrine of res judicata serves vital public interests beyond any individual judge's ad hoc determination of the equities in a particular case. There is simply "no principle of law or equity that sanctions the rejection by a federal court of the salutary principle of res judicata.'

Federated Dep't Stores, 452 U.S. at 401 (quoting *Heiser v. Woodruff*, 327 U.S. 726, 733 (1946)).

In the first action, Travelers, according to its own characterization of the Complaint, elected not to assert all grounds available to hold St. Jude Hospital liable for the Limited Partnership's debts. It should not now be heard to complain about application of the *res judicata* doctrine to its second action against St. Jude Hospital. This is particularly "compelling in view of today's crowded dockets":

> "The predicament in which respondent finds himself is of his own making . . . . [W]e cannot be expected, for his sole relief, to upset the general and well-established doctrine of res judicata, conceived in the light of the maxim that the interest of the state requires that there be an end to litigation—a maxim which comports with common sense as well as public policy. And the mischief which would follow the es-

> tablishment of precedent for disregarding this salutary doctrine against prolonging strife would be greater than the benefit which would result from relieving some case of individual hardship."

Federated Dep't Stores, 452 U.S. at 401-402 (quoting *Reed v. Allen*, 286 U.S. 191, 198-199 (1932)).

Rather than "cordially" embracing the "could-have-been-raised" scope of the *res judicata* doctrine, the court of appeals adopted a grudging approach that, if permitted to stand, would severely undermine both the doctrine itself and the important interests it is intended to protect.

III. REVIEW BY THIS COURT WOULD HAVE A SALUTARY EFFECT NOT ONLY ON THE *RES JUDICATA* DOCTRINE BUT ALSO ON RELATED FEDERAL RULES

The significance of the issues raised in this petition, and this Court's response to them, extends to areas of the law beyond the *res judicata* doctrine. The most obvious further application of the ruling in this case involves Rule 13(a) of the Federal Rules of Civil Procedure, which governs the assertion of compulsory counterclaims.[19]

There are significant similarities between the *res judicata* doctrine and Rule 13(a). The consequence of failing to plead a compulsory counterclaim is that the claim is barred in a subsequent action. *See Baker v. Gold Seal Liquors, Inc.*, 417 U.S. 467, 469 n.1 (1974). The consequence of a *res judicata* finding is the same. Like the *res judicata* doctrine, Rule 13(a) is intended to avoid superfluous litigation, to improve efficiency and thereby benefit the court system and the parties, and to encourage

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[19] Fed. R. Civ. P. 13(a) provides that a counterclaim must be asserted

> if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction.

finality and an end to litigation. *See, e.g., Southern Constr. Co. v. Pickard,* 371 U.S. 57, 60 (1962); *Columbia Plaza Corp. v. Security Nat'l Bank,* 525 F.2d 620, 626 (D.C. Cir. 1975); 6 Charles A. Wright, Arthur R. Miller, & Mary Kay Kane, *Federal Practice and Procedure* § 1409, at 46 (1990). In many ways, the *res judicata* doctrine and Rule 13(a) are complementary, the former imposing on plaintiffs (as well as other parties) the same kind of obligation that the latter imposes on defendants. The two are frequently discussed together.[20]

In seeking to determine whether claims arise from a single "transaction or occurrence" so as to render a counterclaim compulsory, many courts have considered, among other inquiries, whether *res judicata* would bar a subsequent suit on defendant's claim, even apart from Rule 13(a). *See, e.g., McCaffrey v. Rex Motor Transp., Inc.,* 672 F.2d 246, 248 (1st Cir. 1982) (quoting 6 Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1410, at 42 (1971)); *Plant v. Blazer Fin. Servs., Inc.,* 598 F.2d 1357, 1360 (5th Cir. 1979) (citing same); *Sue & Sam Mfg. Co. v. B-L-S Constr. Co.,* 538 F.2d 1048, 1051-1053 (4th Cir. 1976) (citing same). There is considerable logical appeal to the notion that comparable standards should be applied to both the plaintiffs *and* the defendants in an earlier action to determine whether they should be barred from asserting subsequent claims. Indeed, the Seventh Circuit has acknowledged that its "test for determining whether a counterclaim is compulsory [may be] simply to ask whether the claim would also be barred by res judicata . . . ." *Colonial Penn,* 31 F.3d at 448. Guidance from this Court concerning the appropriate scope and application of the *res judicata* doctrine, therefore, will also bene-

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[20] *See, e.g., Colonial Penn,* 31 F.3d at 447-448; *Employers Ins. of Wausau v. United States,* 764 F.2d 1572, 1576 (Fed. Cir. 1985); *Sue & Sam Mfg. Co. v. Lee,* 538 F.2d 1048, 1052 (4th Cir. 1976).

fit courts and litigants faced with Rule 13(a) compulsory counterclaim issues.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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